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Author:
U.S. Congress. House.

Title:
Amending section 77 of the Bankruptcy act...

Place:
[Washington, D.C.]

Date:
[1944]

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U. S. Congress. House. Committee on the judiciary.
... Amending section 77 of the Bankruptcy act (railroad reorganizations) ... Report. To accompany H. R. 4980 ... [Washington, U. S. Govt. print. off., 1944]
12 p. (U. S. 78th Cong., 2d sess. House. Rept. 1615)

Submitted by Mr. Hobbs from the Committee on the judiciary.

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U.S. CONG. HOUSE. COMMITTEE ON JUDICIARY.

AMENDING SECTION 77 OF THE BANKRUPTCY ACT (RAILROAD REORGANIZATION).

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78TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 1615

AMENDING SECTION 77 OF THE BANKRUPTCY ACT (RAILROAD REORGANIZATIONS)

JUNE 8, 1944.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. HOBBS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4960]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4960) to amend section 77 of the act of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," as amended, having considered the same, report the bill favorably to the House, with the recommendation that it do pass. This report is unanimous.

The present bill has been substituted for an earlier bill, H. R. 2857, on which hearings were held, and contains changes made as a result of the hearings.

NECESSITY FOR REVISION OF SECTION 77

The purpose of the bill is to correct a very serious situation arising from the interpretation placed by the Interstate Commerce Commission and the courts upon the amendments of section 77 enacted by the Congress August 27, 1935. We believe this situation results from a misapprehension of the intention of Congress with respect to the 1935 amendments. The consequences have been and are so disastrous to railroad investors, and so dangerous to the credit of the railroads in general, that they should be corrected by legislation.

From a legal standpoint, the problem may be stated simply. Section 77 was directed primarily to the relief of financially embarrassed railroad companies through a revision of their capital structures and a reduction of fixed charges. It does not expressly provide for any reduction in the existing total capitalization; but the Interstate Commerce Commission has interpreted paragraph (d) of the section as authorizing it to fix the total capitalization of the reorganized company. In so doing, it has estimated a "capitalizable value of the

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assets" of the property based almost entirely upon "earning power"—earning power of the property, past, present and prospective—as these words are used in section 77 (e). Its estimates of prospective earning power are necessarily speculative. Nevertheless it has used its estimates of earning power to fix capitalizations in all cases very substantially below the existing capitalizations, regardless of the investment in the property and of the valuation previously determined by the Commission under section 19a of the Interstate Commerce Act. The Supreme Court in passing upon two major reorganization plans—the Western Pacific and the Chicago, Milwaukee, St. Paul & Pacific—upheld the Commission in this interpretation of the section, and has further held that the Commission's findings will not be disturbed where there is some evidence to support them. In other words, these administrative findings are beyond judicial review.

The result of this interpretation of the statute by the Commission, and the subsequent refusal of the courts to review the Commission's findings, has caused the destruction of hundreds of millions of dollars of railroad securities representing actual investment in the property made, to some extent at least, in reliance upon the belief that such investments could not be confiscated except by due process of law. In more detail, the legal problem is as follows:

The original section 77, "An act for the relief of debtors," enacted March 3, 1933, contained a provision in paragraph (d) that the Commission after a hearing on a plan of reorganization shall render a report approving a plan which "may be" different from any that had been proposed. As carried forward into the amendments of August 27, 1935, the language was as follows:

> After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

Section 77, as amended, nowhere specifically authorizes the Commission to reduce the existing total capitalization. It does specifically authorize the Commission to reduce the fixed charges. Under subsection (d), as quoted, the Commission has acted upon the assumption that it had the power to reduce the total capitalization, even though that capitalization was well below the investment in the property and below the Commission's physical valuation fixed under section 19a of the act to regulate commerce.

Subsection (e) of the 1935 amendments requires the judge to approve the plan, if satisfied that it conforms with the provisions of subsection (b) (the principal one of which is the requirement that the plan shall provide for fixed charges of the reorganized company in such an amount that there shall be adequate coverage by the probable earnings available for the payment thereof), but contains no requirement that the court shall satisfy itself of the correctness of the Commission's action under subsection (d). The action of the Commission, therefore, in fixing the total capitalization under subsection (d) is not made specifically dependent upon the approval of the court.

Another of the 1935 amendments involved is the valuation section of paragraph (e). It will be recalled that in the Valuation Act of 1913 (Interstate Commerce Act, sec. 19a), the Commission was directed to determine the value of all the property owned or used by every common carrier, except certain street or suburban railways. It was required to report in detail as to each piece of property, the original cost, cost of reproduction new, the cost of reproduction less depreciation, and all other values and elements of value of the property of such common carrier; also, in detail and separate from improvements, the original cost of all lands and the present value of same. Having completed this work, it was required to serve notice of its tentative valuation upon the carrier, the Attorney General and the governors of the various States in which the properties are located. Thereupon, after hearing if a protest was filed, the valuation became final (sec. 19a (h) (i)). The latter section provides:

> All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

The Commission further is required by section 19a to keep these valuations up to date by keeping itself informed of all new construction, improvements, retirements, and other changes in the condition, quantity, use, and classification of all such property. This valuation work has been in progress ever since the passage of the act and the Commission's files contain full information as to all the property of the carriers.

The 1935 amendments of section 77 included the following paragraph as to valuation:

> If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

This section was proposed to us by the late Joseph B. Eastman, then Federal Coordinator of Transportation. Both Mr. Eastman and his counsel expressed the view that it was desirable, and also that it would not deprive the stockholder affected by any valuation found thereunder from having his day in court for a judicial determination of the value of the property so found.

In proceedings under section 77, the Interstate Commerce Commission has developed what it terms a "capitalizable value" of railway properties, derived from its consideration of "earning power" under subsection (e); and purporting to act under subsection (d), has limited the capitalization of the reorganized company to the "capitalizable value" so determined.

At the time these two amendments were adopted, some 30 class I railroads, owning an aggregate of 75,000 to 80,000 miles of line, were undergoing reorganization. At this time, only a few of these

reorganizations are complete. The first of the reorganization cases to reach the Supreme Court were those of the Western Pacific (*Frederick H. Ecker* v. *Western Pacific RR. Corp.*, 318 U. S. 448, 87 L. ed. 892), and the Chicago, Milwaukee, St. Paul & Pacific (*Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific RR. Co.*, 318 U. S. 523, 87 L. ed. 959), both decided March 15, 1943. The court held in these cases that the findings of the Interstate Commerce Commission as to "capitalizable value" would not be disturbed if they were supported by substantial evidence, and the courts were powerless, under section 77, to grant a judicial review of the findings of the Commission as to valuation determined under section 77 (e), and as to the total capitalization determined under section 77 (d). The result was that the stockholders of both companies were eliminated from participation in the reorganized company, although their stock represented actual investment in the properties, and all security holders of both companies suffered a reduction in the integrity of their holdings and in the probable return on their investments.

In five major companies now undergoing reorganization, the reductions in capitalization aggregate some $600,000,000, meaning that this amount of railroad securities has been eliminated in the reorganization of these five companies alone, although there is no question that the investment in road and equipment and the 19a valuations at the present time are far in excess of the capitalization determined by the Commission. The same is true generally of the other roads involved in reorganization, these five being specifically mentioned, because they are included in one exhibit submitted to this committee by the Interstate Commerce Commission (hearings on H. R. 2857, serial No. 9, p. 199).

That this situation has created an unbearable hardship upon the junior investors in railroad securities and constitutes a real danger to railroad credit may be easily seen from a glance at current railroad earnings. In 1942 the Missouri Pacific earned $32.67 a share on the common stock outstanding under the old capitalization; the Denver & Rio Grande Western, $34.40 a share; Rock Island, $25.11, Frisco, $18.03; St. Louis Southwestern, $27.23. These figures approximately were repeated in 1943, and the high earnings are continuing in 1944. Yet these stocks, which have demonstrated such an earning power, have been absolutely wiped out in reorganization, and the stockholders are without remedy. Moreover, the junior securities of all these roads have been drastically cut in reorganization and the senior securities have been very largely converted into income bonds and preferred and common stock. In one case, the Commission estimated a normal earning power of $11,000,000, and based its capitalization upon that figure, yet in the same year in which the Commission's plan was announced (1941) that road earned more than $18,000,000. In 1942, it earned $36,000,000 and in 1943 $37,000,000. Nevertheless the Commission still says the old common stock is worthless. The stockholders are without remedy. There is in practical effect no judicial review of the action of the Commission. Although its guess as to future earning power has been demonstrated to be wrong, its findings are final.

It is true that in the last few years earnings due to wartime traffic have surpassed all expectations. It is a fortunate thing for the country that its first line of defense—the transportation system—was able to handle this traffic with such magnificent results. The

Commission, in fixing its plans, did not foresee it; likewise, no one can foresee what traffic there will be for the railroads after hostilities have ceased. There will, of course, be a reduction in the wartime traffic, but, unless we are to concede that we are willing to get along with a much less adequate transportation system, and unless we are to admit that our efforts at readjustment after the war will be a failure, then we must insist that the owners of these securities now being confiscated should share in the prosperity which has come as a result of the war and in that which necessarily will follow in rebuilding the Nation's industries.

THE PURPOSE OF THE BILL

The primary purpose of the bill is to insure that the courts shall make an independent judicial review of each plan and of the evidence upon which the plan is based. Under the existing statute, the Commission is required to certify to the court a transcript of its proceedings; and the court is required to notify all parties and, if objections are filed, to have a hearing. The effect of the proposed amendments is to require the judge to make an independent judicial determination of the facts found by the Commission, and not to hold that the administrative finding of the Commission is beyond judicial review. With this object in mind, the bill provides that the judge shall not only be satisfied that the plan complies with the provisions of subsection (b) as in the present statute, but must also be satisfied that it complies with the provisions of subsection (d), which the Supreme Court held was not within the province of judicial review. This will add nothing to the requirements of the present statute as to the hearing and the scope of the evidence; it will merely direct the courts to exercise the traditional right of review, and to give the parties and the public the benefit thereof.

Second, and as a means of insuring that the Interstate Commerce Commission shall be guided by some standard in determining the permissible capitalization of the reorganized company, the bill provides that the existing total capitalization shall not be reduced below the lower of either the investment in the property or the physical valuation as previously determined by the Commission under section 19a. Naturally, if the existing capitalization exceeds the investment, it should be susceptible of reduction, if the Commission finds it is not supported by earning power; or, if the existing capitalization exceeds the physical valuation found by the Commission, it should be susceptible of reduction, unless in that event the Commission deems the earning power sufficient to support it. But where the existing capitalization represents actual investment in the property, or where it is not in excess of the value determined by the Commission under the mandate of law, then it should not be disturbed.

If the transportation system of the country is to be adequately financed, investment in railroad securities must be kept attractive for private investors. It is folly to expect investors to finance new railroads by purchasing stocks or junior securities which may be arbitrarily eliminated. Twenty-four years ago in Congress the question of railroad credit was discussed by Mr. Rayburn, of Texas, who, in advocating the enactment of section 20a of the Transportation Act of 1920, stated (Congressional Record, 66th Cong., 1st sess., vol. 58, pt. 8, p. 8376):

Of course, the credit of the railroads has been destroyed. But if we write into the law of the land a statute to the effect that before a railroad can issue new securities, before it can put them on the market, it must come before the properly constituted governmental agency, lay the full facts of its financial situation before that body, tell that body what it intends to do with the money derived from the sale of the issue of securities, and after it has received the approval of that regulating body and it goes out and puts those securities on the market, then the Interstate Commerce Commission by this law is empowered at any time to call it to account and have it tell to that regulating body that it expended the money, the proceeds of the sale of securities, for the purposes for which it had made the application. Then we shall have railroad securities that will stand for value in the markets of this country and in the markets of all the world.

It is under this section 20a that the Commission has authorized the issue of some $20,000,000,000 of securities, plus some 20,000,000 shares of capital stock without par value (I. C. C. Activities, 1887–1937, p. 168). Section 20a of the act requires in every case that the Commission certify that the proposed issue of securities is compatible with the public interest. It is ironical that many of the securities which the Commission is now wiping out in reorganizations under its determinations of permissible capitalization are securities which, directly or indirectly, have been approved by the Commission under section 20a. Many instances have been cited to us which it is not necessary to repeat here.

The important thing is that the Commission in determining total capitalization has no standard to guide it. It must make an estimate of future earning power. In the very nature of things, it cannot foresee with any degree of accuracy what the future earning power will be. As Commissioner Miller said in one case (242 I. C. C. 475), "We are not omniscient and cannot foresee the future."

Another reason why the Commission's estimates of earning power are unsatisfactory as a means of determining value is that the earning power of the carriers generally is within the control of the Commission. Under our scheme of regulation, it is the Commission's duty so to regulate the rate structure that there will be a fair return on the value (as determined under sec. 19a) of the property devoted to public use (act, sec. 15a). It is that provision which justifies an investor in investing his funds in railway capitalization. To say that because the Commission has failed, for whatever reason, to obtain this result, the investor should be destroyed, is certainly not due process of law and cannot conceivably benefit railway credit.

In order to carry out the policy, however, of having fixed interest charges reduced, the bill contains a proviso in section 1 (ii) that, if the existing capitalization is in excess of the value of the debtor's property as certified by the Commission under subsection (e)—that is, of what the Commission terms "capitalizable value"—the excess shall be represented by no-par stock issued at the rate of one share for each $100 of such excess. The purpose of this is to afford to the existing stockholders and junior security holders a continued interest in the property. This no-par common stock will still represent actual investment in the property and will still represent a value which the Commission itself has determined under section 19a. It will in no sense be a speculative medium. In bad years, it will pay no dividends; in the good years it should reap the benefit of prosperity at least sufficient to compensate for what the investor has lost in the bad years. As the matter stands now, the investor has suffered through the bad years, and when prosperity has returned the procedure under

section 77—originally designed as an act for the relief of debtors—has taken his investment and turned it over to his creditors.

In this connection, the bill contains an additional provision which may be quite helpful. It requires the Commission to name one of its members to confer with the parties in interest and to endeavor to act as a mediator to reconcile their differences. It is thought that this provision will avoid much controversy and consequently shorten the proceedings.

EFFECT ON PENDING REORGANIZATIONS

The bill is made to apply to all reorganization proceedings now pending, except where the property dealt with by the plan has been transferred to a new corporation or retained by the debtor pursuant to the plan, or where the plan has been voted on and accepted by the requisite percentage of creditors of each class prior to the effective date of this amendment.

It is not believed that the provisions of the bill will result in any delay in the pending cases. If it did so result, however, that would not be an objection to correcting a wrong. All of the facts in all of the pending cases are already of record. No long-drawn-out investigation in any case would be necessary to enable the court to pass judicially upon the Commission's determination of earning power. The standards by which the new capitalization is to be measured, that is, the actual investment and the 19a valuations, are readily accessible from the files of the Commission, and in most cases have been introduced into the records already before the courts. While the Commission's valuations under section 19a are by statute made only prima facie evidence (sec. 19a (i)), and may be contested in court when improperly made (*United States* v. *Los Angeles & Salt Lake RR. Co.*, 273 U. S. 299) 19a valuations do not involve any conflict as to the facts, all of which are matters of record. The controversy would relate only to principles, or the evaluation of evidence.

We conclude, therefore, that the enactment of this portion of the bill would not tend to delay the progress of pending plans. Delay, however, would be preferable to confiscation.

CONCLUSION

The committee has held protracted hearings on H. R. 2857 for which the present bill is a substitute embodying amendments made as a result of those hearings, and has reached the conclusion that the consummation of the reorganization plans as now framed would be a severe blow to railroad credit and make it well-nigh impossible for any but the richest railroads to obtain new capital on attractive terms. Certainly the present prices of railroad stocks, which are discouragingly low in spite of very high earnings, indicate that no new financing can be done through the medium of common stock until something has been accomplished toward the restoration of railroad credit. Particularly is this true in the case of the reorganized railroads whose preferred and common stocks are being traded in on a when-issued basis at far below par, generally around 35 to 40 for new preferred stocks, and 15 to 20 for new common stocks. This in itself is a commentary on the public regard in which railroad stocks are held. Just

emerging from reorganizations after years of careful consideration by the Commission and in a time of rare prosperity, the natural expectation would be that all of the new securities would bring par. As it is now, the only way for the reorganized roads to finance their necessary capital requirements, which we are advised will be heavy after the war, is to issue first mortgage bonds to provide funds, and this will lead back to the evils which section 77 was designed to prevent. The current prices of the new junior securities about to be issued under the Commission's plan indicate that future investment therein has been discouraged by what has happened to the present holders of existing issues. We believe this bill will go far toward curing this situation, and, therefore, recommend its passage.

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law in which no change is proposed is shown in roman, new matter is printed in italic, and existing law proposed to be omitted is enclosed in black brackets):

SEC. 77. * * * (b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest therein, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term

"stockholders" shall include the holders of voting-trust certificates. The term "creditors" shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. For all purposes of this section unsecured claims, which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings. The provisions of section 60 of this Act shall apply to a proceeding under this section. For all purposes of this section any creditor or stockholder may act in person or by an attorney at law or by a duly authorized agent or committee subject to the provisions of subsection (p) hereof. The running of all statutes of limitation shall be suspended during the pendency of a proceeding under this section.

The capitalization of the reorganized company shall not be less than the capitalization existing on the date on which the debtor's petition to the court was approved as properly filed, with such adjustment therein as may result from the issue or retirement of securities during the reorganization proceedings: Provided, That such existing capitalization does not exceed either—

"(i) the actual investment in the debtor's properties, or

"(ii) the valuation found by the Commission under section 19 (a) of the Act, plus expenditures for additions and betterments less retirements since the date of such valuation, whichever is the lower: And provided further, That any part of such capitalization in excess of the value of all of the debtor's property as certified by the Commission pursuant to subsection (e) shall be represented by shares of stock without par value of the reorganized company at the rate of one share of such stock for each $100 of such excess."

* * * * * * *

"(d) The debtor, after a petition is filed as provided in subsection (a), shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six months of the effective date of this Act, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission[,] *shall name one of its members to confer with the parties in interest and to endeavor as a mediator to reconcile differences which may exist between them and* unless such plan shall be considered by it to be prima facie impracticable, shall after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings[,] at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together

with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

(e) Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no *objection is* [objections are] filed, the judge shall *make full and independent judicial reexamination and review of the plan and of the evidence presented at such hearing, in the event of such hearing, and thereafter shall* approve the plan if, *in the exercise of his independent judgment based upon such judicial reexamination and review, he is* satisfied that [: (1) It complies with the provisions of subsection (b) of this section,] *(1) the plan complies with the provisions of subsections (b) and (d) of this section,* is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class *thereof,* [of creditors or stockholders,] and will conform to the requirements of the *Constitution and statutes of the United States;* [law of the land regarding the participation of the various classes of creditors and stockholders;] *(2) the determination of value made by the Commission and certified to the court under the provisions of this subsection is supported by substantial evidence, adequately reflects the true value of the property at the time of hearing, or at the time of certification of the plan by the Commission, in the event no hearing is had before the court, and does not omit consideration of any relevant facts;* [(2)] *(3)* the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; [(3)] *(4)* the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same.

If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceedings under the provisions of subsection (d) hereof. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) hereof, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided,* That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge [shall have affirmed the finding,] *in the exercise of his independent judgment, after consideration of the evidence presented at the hearing before the court, in the event of such hearing, shall also find* (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further,* That submission to any class of creditors shall not be necessary

if the Commission shall have found, and the judge [shall have affirmed the finding,] *in the exercise of his independent judgment, after consideration of the evidence presented at the hearing before the court, in the event of such hearing, shall also find* that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States, or any officer or agency he may designate, is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission. *Provided,* That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e): *Provided further,* That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance, certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: *Provided further,* That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

"If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, [as may be required under the law of the land] *as will conform to the requirements of the Constitution and statutes of the United States* in light of its earning power and all other relevant facts."

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(s) [Proceedings pending under this section (Act of March 3, 1933) on the effective date of this amendatory section shall continue under, and be governed by, the provisions of this amendatory section: *Provided,* That the enactment of this amendatory section shall not invalidate any action taken before its effective date pursuant to this section as it existed prior to the enactment of this amendatory section.] *Proceedings pending under this section (Act of March 3, 1933, as amended by Act of August 27, 1935, and Act of June 26, 1936, and Act of August 11, 1939) shall continue under, and be governed by, the provisions of this section as hereby amended, except where the property dealt with by the plan has been transferred*

and conveyed to the debtor or another corporation or corporations provided for by the plan, or retained by the debtor pursuant to the plan, as provided in subsection (f) of this section, or where the plan has been submitted to creditors for acceptance or rejection pursuant to subsection (e) and has been accepted by or on behalf of the requisite percentage of creditors of each class to which submission is required, prior to the effective date of this amendment. If such property has not been so transferred and conveyed or retained pursuant to the plan, or if such plan has not been so submitted and so accepted, no final decree shall be entered in any such proceedings unless and until subsequent to such effective date the judge of the court to which the plan was certified by the Commission shall have made a supplemental finding, subject to judicial review, that the plan conforms to the requirements of this section as amended.

Except as provided in this subsection (s) the enactment of this amendatory section shall not annul the record made at any hearing before the Commission or in any court proceeding prior to the enactment of this amendment, but such record may be amplified in accordance with the provisions of this amendment, if in the opinion of the reviewing court such amplifications may be necessary or desirable (1) by reason of any substantial change or changes that may have occurred since the hearing, or (2) for clarification.

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